

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220792

DATE: November 14, 1985

MATTER OF: Petty Officer First Class Bruce F.
Jenkins, USN

DIGEST:

A Navy petty officer's request for waiver of his debt to the United States arising out of overpayments of a military basic allowance for quarters and a variable housing allowance is denied, where it appeared that he knew or strongly suspected he was being overpaid. Under the governing provisions of statutory law, waiver of overpayments of military pay and allowances is not allowed if the service member knew or should have known he was being overpaid and consequently, in this case, there is no basis for waiving collection of the overpayments.

Petty Officer First Class (HM1) Bruce F. Jenkins, USN, requests reconsideration of our Claims Group's denial of his request for a waiver of his debt to the United States arising out of overpayments of allowances he received between August 1980 and November 1982. On the basis of the facts presented, and the applicable provisions of law, we sustain the denial of waiver.

Background

Under the pay and allowance system applicable to members of the uniformed services either Government living quarters are provided or a basic allowance for quarters is paid. Service members who are paid the basic allowance for quarters may also be paid a variable housing allowance when assigned to high housing cost areas in the United States. A service member who is provided with suitable Government quarters "is not entitled to a basic allowance for quarters," however, nor to a variable housing allowance.^{1/}

^{1/} See 37 U.S.C. § 403 (1982); and 37 U.S.C. §§ 403 and 403a (current, after amendments added by P.L. 98-525, §§ 602(c) and (d), 604(a), October 19, 1984, 98 Stat. 2534, 2537).

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Petty Officer Jenkins, who had then been on active duty for about 7 years, was transferred to shore duty at New London, Connecticut, in August 1980 on a permanent change-of-station move. He was assigned to Government family quarters there from August 14, 1980, until November 7, 1982, when he was reassigned to a ship at Portsmouth, New Hampshire. Navy disbursing officials subsequently discovered that he had been credited with and had been paid both a basic allowance for quarters and a variable housing allowance during the time he had been assigned Government family quarters at New London. The allowance overpayments he received ranged from about \$280 to about \$410 per month during this period and totaled \$9,237.98.

Petty Officer Jenkins requested a waiver of the resulting claim against him for a refund of that amount. He indicated he had noticed entries on his Leave and Earnings Statements showing he was being credited with the quarters and variable housing allowances, and on 3 separate occasions he questioned the correctness of this. On each occasion, he states, he was assured by clerks at his disbursing office that he was being correctly paid. He suggested that in those circumstances the overpayments should be viewed as an administrative error for which the Navy was solely responsible. He further indicated that he and his family would suffer undue financial hardship if he were required to refund the overpayments.

The Navy Family Allowance Activity and then the Claims Group of our Office denied Petty Officer Jenkins' request, however, and he has now asked for further review and reconsideration in the matter.

Analysis and Conclusion

Under the authority of 10 U.S.C. § 2774, a claim arising out of erroneous payments of pay and allowances made to or on behalf of members of the uniformed services may be waived if collection would be "against equity and good conscience and not in the best interest of the United States." 10 U.S.C. § 2774(a). This authority may not be exercised if there exists, in connection with the claim, an indication of "fault" on the part of the service member. 10 U.S.C. § 2774(b)(1).

We interpret the word "fault," as used in 10 U.S.C. § 2774, as including something more than a proven overt act or omission by the concerned service member. Thus, we consider fault to exist if in the light of all the facts and circumstances it is determined that the member knew or should have known that an error existed, and should have taken appropriate action to have it corrected even though the error was caused initially by others. The general standard we employ is to determine whether a reasonable person should have been aware of the existence of an overpayment.^{2/}

Concerning overpayments of the basic allowance for quarters and related housing allowances, we have expressed the view that service members should expect to experience a significant reduction in their net pay because of the discontinuance of those allowances upon their assignment to Government quarters. We have also expressed the view that service members in that situation have a duty to examine any Leave and Earnings Statements available to them to determine whether they are being erroneously credited with those allowances. Moreover, we have held that reasonably prudent service personnel who have strong reason to suspect they are being overpaid in such circumstances cannot rely on vague assurances from disbursing clerks that their pay is correct, but that they instead have a duty to set aside the suspected overpayments for eventual refund, and to insist that their pay records be carefully examined. Further, we have held that financial hardship that might result to service members in being required to refund substantial allowance overpayments in such cases is not a factor which may properly be considered in determining whether they are at "fault."^{3/}

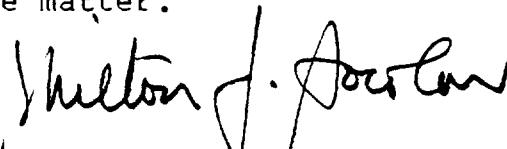
^{2/} See 4 C.F.R. Part 91. See also Veterinary and Optometry Officers, 56 Comp. Gen. 943, 951 (1977).

^{3/} See, e.g., Petty Officer First Class Shelby W. Miller, USN, B-203213, December 21, 1981; Chief Petty Officer William F. Seacrest, Jr., B-201814, September 18, 1981; Lieutenant Commander Ronald W. Phoebus, USN, B-197275, March 21, 1980; and Petty Officer First Class Arthur G. Stanley, USN (Retired), B-195714, January 29, 1980. See also Price v. United States, 621 F.2d 418 (Ct. Cl. 1980).

B-220792

In the present case, therefore, we find that Petty Officer Jenkins either knew or had strong reason to suspect that he was being overpaid when he continued to receive the allowance payments after he was assigned Government quarters. Although apparently he did inquire about the correctness of his pay, we find that a reasonably prudent service member of his rank and years of experience would not have been satisfied by perfunctory assurances, but would have insisted on a breakdown and examination of his pay and allowance entitlements. Had Petty Officer Jenkins insisted that his pay records be so examined, the error would doubtless have been detected and corrected soon after it occurred. Hence, we conclude that he is not without fault in the matter and is therefore ineligible for favorable consideration under the waiver statute, notwithstanding his belief that his repayment obligations now will cause financial hardship.

Accordingly, we deny Petty Officer Jenkins' request for a waiver of his indebtedness, and we sustain our Claims Group's determination in the matter.

for 
Comptroller General
of the United States